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United States v. Standard Sanitary Co. (1912) 226 U. S. 20, 33 Sup. Ct. 9. Pooling arrangements have been condemned though they eliminated wasteful competition. *United States v. Trans-Missouri Freight Ass'n* (1897) 166 U. S. 290, 17 Sup. Ct. 540. The instant case carries this tendency to an extreme. Legalistically it is sound. Undoubtedly the combination diminishes competition. The economic question is: is the restraint undue? It seems clear that disseminating information as to trade conditions does not violate the anti-trust laws. Business men rely on this news. The instant case is analogous. The data were not secret but available to the public and the summaries were sent to the Federal Trade Commission. So far as the "Plan" diminished competition and raised prices, it was through independent individual action based on information. The decision seems ill-advised for another reason. The tendency is for business to amalgamate after reaching a certain size, either by merger or loose associations. The instant holding prevents the latter and compels the former. Thus the small producer is driven out and instead come enormous aggregations of capital with their possibilities for untoward influence.

SPECIFIC PERFORMANCE—STIPULATION FOR LIQUIDATED DAMAGES—EXTRINSIC EVIDENCE.—The plaintiff brought an action for specific performance of a contract for the purchase of real estate which contained a provision for the payment of liquidated damages in case of default. *Held*, the defendant was entitled to show by extrinsic evidence and circumstances that the provision was intended to be the exclusive remedy and therefore it was error to enter judgment for the plaintiff on the pleadings. *Dealy v. Klapp* (App. Div. 3d Dept. 1921) 191 N. Y. Supp. 457.

It is well settled that a provision for a penalty or for liquidated damages does not bar specific performance. *Hubbard v. Johnson* (1885) 77 Me. 139; *Koch v. Streuter* (1905) 218 Ill. 546, 75 N. E. 1049; *Diamond Match Co. v. Roeber* (1887) 106 N. Y. 473, 13 N. E. 419. But where it appears that the contract is performable in the alternative by the defendant, specific performance will be denied. *Davis v. Isenstein* (1913) 257 Ill. 260, 100 N. E. 940. The real problem is to determine what the main motive of the parties was; whether it was to make the damages or penalty a security for performance; or whether the parties really contemplated a performance in the alternative. See *Phoenix Ins. Co. v. Continental Ins. Co.* (1882) 87 N. Y. 400, 406, 407. It has been suggested that the decisive factor in deciding whether a contract is performable in the alternative is the determination whether the provision is for a penalty or for liquidated damages. If the stipulation is for liquidated damages, the contract is performable in the alternative. *Richardson v. Terry* (Tex. Civ. App. 1919) 212 S. W. 523; see *Amanda G. M. Co. v. People's M. Co.* (1901) 28 Colo. 251, 255, 64 Pac. 218. This doctrine, however, is not supported by the weight of authority. *Brown v. Friedberg* (1920) 127 Va. 1, 102 S. E. 468; *Koch v. Streuter, supra*; *Phoenix Ins. Co. v. Continental Ins. Co., supra*. In the instant case the court correctly decided that it was error to enter judgment for the plaintiff on the pleadings. It is well settled that a contract is to be interpreted in the light of surrounding circumstances. *Diamond Match Co. v. Roeber, supra*; *Phoenix Ins. Co. v. Continental Ins. Co., supra*. This evidence might show the contract to be performable in the alternative.

STATUTE OF FRAUDS—CHOSES IN ACTION—CABLE TRANSFER OF FOREIGN EXCHANGE.—In an action for breach of an oral contract to make a cable transfer of credit, the defendant pleaded the Statute of Frauds. *Held*, for the plaintiff. The contract is not within the Statute. *Equitable Trust Co. v. Keene* (Ct. of App. 1922) 66 N. Y. L. J. 1464.

A contract to sell or a sale of a chose in action is within the Statute of